

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

PAUL WARNER and)
BROTHERS OF THE WHEEL M.C.)
EXECUTIVE COUNCIL, INC.)
Petitioner,)

Cancellation No.: **92059164**

v.)

Mark: **BROTHERS OF THE WHEEL**

GERALD R. MOLLOHAN and)
BROTHERS OF THE WHEEL)
Respondent)

Registration No.: **4299480**

Date Registered: March 05, 2013

**RESPONDENTS' BRIEF AND MOTION FOR DISMISSAL OF PETITIONERS'
RESPONSE TO MOTION TO DISMISS, MOTION TO CONSOLIDATE WITH
PENDING CASE AND NOTICE OF APPEARANCE OF COUNSEL**

INTRODUCTION

COMES NOW Registrant and Respondent, Gerald R. Mollohan, Pro Se et al, owner of Trademark Registration Number 4299480 for "BROTHERS OF THE WHEEL", Classification 026 EMBROIDERED PATCHES to hereby notify the Board (TTAB) of his "RESPONDENTS' BRIEF AND MOTION FOR DISMISSAL OF PETITIONERS' RESPONSE TO MOTION TO DISMISS, MOTION TO CONSOLIDATE WITH PENDING CASE AND NOTICE OF APPEARANCE OF COUNSEL".

The petitioner abandoned his trademark, failed to provide proof that his petition of cancellation was served on the registrant and respondent per Trademark Trial and Appeal Board Manual of Procedure (TBMP), Trademark Laws and thus, this matter should be denied immediately.

FACTS

- 1) Petitioner Paul Warner was aware of the facts and laws when he filed this petition for cancellation and that he is not qualified to appear or practice Trademark Law before the Trademark Trial And Appeal Board (TTAB) or any Court for that matter, and represent a corporation per Trademark Trial And Appeal Board Manual Of Procedure (TBMP) Latest edition, 37 CFR § 2.19(b), § 10.40, § 11.14 and other applicable rules of this most honorable Court. Both petitioners PAUL D. WARNER (President), RAY EDWIN CAREY (Vice President) and /or petitioners “BROTHERS OF THE WHEEL M.C. EXECUTIVE COUNCIL, INC.” are named defendants in Civil Action 2:14-cv-15592 filed 04/30/14 in The U.S. District Court for The Southern District of West Virginia at Charleston and defending the following counts; “NAKED LICENSING” and “TRADEMARK CANCELLATION”. The Plaintiff in Civil Action 2:14-cv-15592, Frank J. Visconi, has filed a Motion for Default Judgment in that matter and when successful, the petitioner’s trademark number 2926222 will be cancelled. Paul Warner and his “executive council” have abandoned trademark number 2926222 per the complaint, evidence of “Naked Licensing Doctrine” and motions filed by Mr. Visconi.

This Court should agree and deny this petition to cancel. Per registrant and respondent U.S. District Court records and motions, petitioner is likely not to own a trademark, as it is likely to be cancelled in U.S. District Court in Charleston, West Virginia and in other ongoing Civil Actions.

- 2) Petitioner Paul Warner and Attorney Richard J. Lindroth have filed their “PETITIONERS’ RESPONSE TO MOTION TO DISMISS, MOTION TO CONSOLIDATE WITH PENDING CASE AND NOTICE OF APPEARANCE OF

COUNSEL” (Prosecution History #8 - 06/19/2014) knowing that it will be obvious to all that the petitioners commenced these proceedings before this Court merely for the purpose of harassing or maliciously injuring the respondents per 37 CFR § 10.40 (b) (1) (2) (3) (c).

- 3) Petitioners’ “PETITIONERS’ RESPONSE TO MOTION TO DISMISS, MOTION TO CONSOLIDATE WITH PENDING CASE AND NOTICE OF APPEARANCE OF COUNSEL” (Prosecution History #8 - 06/19/2014) is not presented correctly per Trademark Trial and Appeal Board Manual of Procedure (TBMP) latest edition and in violation of Trademark Trial and Appeal Board Manual of Procedure (TBMP) Chapter 502.02 37 CFR § 2.126(a)(5) § 2.123(g)(2) and Chapter 101.02 Federal Rules 37 CFR § 2.122(a) Rules of Evidence: *“The rules of evidence for proceedings before the Trademark Trial and Appeal Board are the Federal Rules of Evidence, the relevant provisions of the Federal Rules of Civil Procedure, the relevant provisions of Title 28 of the United States Code, and the provisions of this Part of Title 37 of the Code of Federal Regulations”*.
- 4) Petitioners’ Exhibit “A” Civil Action 2:11-cv-00104 was dismissed by Order of the Court and further Ordered Removed from the Court Docket by a U.S. District Court Judge in Charleston, West Virginia on February 19, 2014. An attempted appeal by Petitioner Warner and Attorney Lindroth has been unsuccessful and appears to have fallen on deaf ears. This Registrant and Respondent made numerous Post-Trial Motions (February 2014 – May 2014) in that court. The Court of Appeals for the Fourth Circuit has issued three letters to the Court indicating they are unable to consider the appeal matters of the petitioners, until all Registrant and Respondents’ Post-Trial Motions are ruled on. Thus

the Fourth Circuit Court of Appeals has yet to accept and/or review any matters concerning Civil Action 2:11-cv-00104. The U.S. District Court did order the matter of Civil Action 2:11-cv-00104 dismissed and removed from the docket, hence there appears to be nothing to continue on for either party.

- 5) Petitioners' are in violation of the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations ("Trademark Rules").
- 6) Registrant and Respondent GERALD R. MOLLOHAN is the owner of three registered copyrights; BROTHERS OF THE WHEEL M.C. NOMAD – Registration Number VA 1-908-258 Effective date of registration: December 14, 2013 2-D Author Created Artwork. BROTHERS OF THE WHEEL – Registration Number TXu 1-857-219 Effective date of registration: September 6, 2012 Author Created Text. BROTHERS OF THE WHEEL M.C. BY-LAWS – REGISTRATION NUMBER TX 7-800-119 Effective date of registration: November 7, 2013 Author Created Text.
- 7) The registrant and respondent have other trademark and copyright application ownership.
- 8) The petitioners are in violation of the Naked Licensing Doctrine in that they "lack any quality control" of the mark per requirements of Section 45 of the Lanham Act.

ARGUMENT

Petitioners' response number "1", even if partly true, appears to the respondents to be without merit and infringing on the respondents registered trademark and copyrights. The Petitioners claim to have started with subject mark in 1993 according to records on file at the USPTO, in this Court and in other Court Records.

In response number "2" the petitioners make another false statement, as respondent Mollohan retired with full legal rights and entitlements to the petitioners name and all logo designs, which

at the time was not a registered trademark for anyone, but merely an unknown person's name and design.

A group in Arkansas, which this respondent previously submitted as evidence, first used the term "Brothers of the Wheel" in 1884. There also exists another "Club" using the term "BOTW" and "Brothers of the Wheel" claiming to have first used name and acronym in 1972. They are located in Anderson, Indiana. There are others using the same acronym (BOTW) to identify themselves. "Bank of the West" is just one of many throughout the United States and research shows that there are more in other countries. There is also a bicycle club using the name "Brothers of the Wheel" and there are others on Internet social media.

Petitioners' response number "3" is without merit as respondent organized a Motorcycle Club in the State of Washington on January 1, 2000 using his own trademark and own name which are now registered trademarks and registered copyrights completely owned by respondent Mollohan.

Petitioners' response number "4" appears to the respondents to mean nothing to him and should mean nothing to this most honorable Court, as that matter, as stated previously mentioned has been dismissed by U.S. District Court and removed from that Court's docket.

The Petitioners continue to infringe on the respondents marks and copyrights. Respondents have filed legal action in U.S. District Court in Charleston, West Virginia. Respondents previously provided this honorable Court, exhibits of his U.S. District Court complaints and records concerning those matters naming Petitioner Warner and his enterprise as defendants.

Petitioners' response number "5" appears to the respondents to mean nothing to him and should mean nothing to this most honorable Court as that matter, as stated previously, has been dismissed by U.S. District Court and removed from that Court's docket. Petitioners appeal in that matter has fallen on deaf ears.

The Petitioners continue to infringe on the respondents marks and copyrights. Respondents filed legal action in U.S. District Court in Charleston, West Virginia. Respondents previously provided exhibits to this most honorable Court.

Petitioners' response number "6" is without merit as respondents previously explained. Furthermore, Attorney Lindroth is not qualified nor is he authorized to represent anyone before this most honorable Court/Board **per 37 CFR § 11.7 of Trademark Regulations**, which stipulate that a licensed attorney must "register" and complete, and examination to qualify to practice before this honorable Court/Board. Additionally, **Petitioner Warner is not authorized nor qualified to represent a Corporation in any legal matter.**

Petitioners' response to number 7, number 8, number 9, number 10, number 11, number 12, number 13, number 14 and number 15, is that the petitioners' are totally out of line and again provide statements that are without merit. Respondents have always provided accurate and honest details when making applications for both Trademarks and Copyrights. The petitioners, on the other hand, have not. The petitioners have provided fraudulent affidavits, and false information to the Courts and false information and details to the USPTO and TTAB.

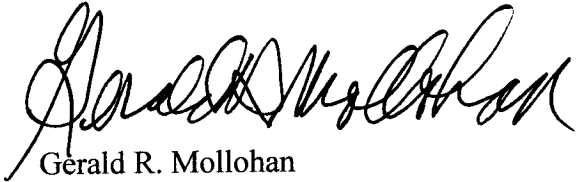
CONCLUSION

For the foregoing facts, evidence and valid reasons, Registrant and Respondents' urge this most honorable Court's approval of "RESPONDENTS' BRIEF AND MOTION FOR DISMISSAL OF PETITIONERS' RESPONSE TO MOTION TO DISMISS, MOTION TO CONSOLIDATE WITH PENDING CASE AND NOTICE OF APPEARANCE OF COUNSEL" and to cancel petitioners' trademark.

In the alternative, Registrant and Respondents' urge and request that this most honorable Court to Strike and find as moot "PETITIONERS' RESPONSE TO MOTION TO DISMISS,

MOTION TO CONSOLIDATE WITH PENDING CASE AND NOTICE OF APPEARANCE
OF COUNSEL” (Prosecution History #8 - 06/19/2014).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gerald R. Mollohan". The signature is fluid and cursive, with the first name "Gerald" being more prominent.

Gerald R. Mollohan
Brothers of the Wheel
P.O. Box 507
St.Albans, West Virginia 25177-0507
Pro Se, *et al*
Registrant and Respondent

EXHIBIT “A”

PRESENTED BY:

GERALD R. MOLLOHAN

Mark: BROTHERS OF THE WHEEL

Cancellation No.: 92059164

Cancellation No. 92059164

Mark: BROTHERS OF THE WHEEL

Registration No.: 4299480

Date Registered: March 05, 2013

COPYRIGHTS OWNED by Gerald R. Mollohan

(Issued by: United States Copyright Office)

☐ **[1]** Mollohan, “Brothers of
Gerald R. the Wheel” **TXu001857219 2012**

☐ **[2]** Mollohan, “BROTHERS
Gerald OF THE
Roscoe WHEEL M.C.
NOMADS” **VA0001908258 2002**

☐ **[3]** Mollohan, “BROTHERS
Gerald OF THE
Roscoe, WHEEL M.C.
1943- BY-LAWS” **TX0007800119 2000**

CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2014, a copy of the foregoing

**“RESPONDENTS’ BRIEF AND MOTION FOR DISMISSAL OF PETITIONERS’
RESPONSE TO MOTION TO DISMISS, MOTION TO CONSOLIDATE WITH
PENDING CASE AND NOTICE OF APPEARANCE OF COUNSEL”**

and

EXHIBIT “A”

**“COPYRIGHTS OWNED BY GERALD R. MOLLOHAN
(Issued by: United States Copyright Office)”**

was sent by U.S. Mail, postage prepaid to:
PAUL WARNER and
BROTHERS OF THE WHEEL M.C. EXECUTIVE COUNCIL, INC.
PO BOX 782
MADISON, WEST VIRGINIA 25130
UNITED STATES

and

RICHARD J. LINDROTH
PO BOX 331
ELEANOR, WV 25070

A handwritten signature in black ink, appearing to read 'Gerald R. Mollohan', written over a horizontal line.

**GERALD R. MOLLOHAN, Pro Se et al
BROTHERS OF THE WHEEL
PO BOX 507
ST. ALBANS, WEST VIRGINIA 25177-0507
United States of America**